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In the Supreme Court of the United States

No. [redacted] 43

OCTOBER TERM, 1962.

N. L. LINER, *et al.*,
Petitioners,

vs.

JAFCO, INC., *et al.*,
Respondents.

BRIEF OF RESPONDENTS.

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In the Supreme Court of the United States

No. 628.

OCTOBER TERM, 1962.

N. L. LINER, *et al.*,

Petitioners,

vs.

JAFCO, INC., *et al.*,

Respondents.

BRIEF OF RESPONDENTS.

QUESTION PRESENTED.

Do the Tennessee courts have jurisdiction to enjoin peaceful picketing, intended to produce a breach of contracts among employers picketed, when no arguable labor dispute is involved as a matter of fact?

STATEMENT OF THE CASE.

Jafco, a Tennessee corporation having its office and only place of business in Cleveland, Bradley County, Tennessee, contracted with Rea Construction Company, a foreign corporation licensed to do business in Tennessee, for the construction of a shopping center in Cleveland. During the construction period, on August 8, 1960, N. L. Liner, a member of Local 846 of the Hod Carriers Union, appeared at the construction site bearing a sign reading "Rea Construction Co. not under contract with Chattanooga Building Trades Council, A. F. of L." This caused certain union employees who were on the job to leave their jobs, and shut down the progress of the work.

A bill in Chancery was filed by Jafco, with Rea later added, to enjoin the picketing because it was done for the purpose of inducing a breach of contract, in violation of Tennessee law. (R. 1 *et seq.*) At the hearing the testimony of the Union showed clearly that the picketing was *not* for the purpose of organizing the employees of Jafco or Rea. The trial court found that the real purpose of the picketing was to cause the breach of contracts valid under Tennessee law. The trial court also found, as a matter of fact, that interstate commerce was not involved (R. 84 *et seq.*), and that there was no "labor dispute." (R. 17 and 86.)

On or about August 1, 1961, the construction job was completed. In January of 1962 the Court of Appeals affirmed the trial court. They concurred in the finding by the trial court that no labor dispute existed, and that the defendants never attempted to organize the Rea Construction Company. In addition, they noted the mootness of the question since construction had long since ceased. (R. 97.)

The defendants did not, during the pendency of this case, apply to the National Labor Relations Board for relief. (R. 87.) They did, through their attorney, make inquiry as to whether the Board would assert jurisdiction, but received only a non-committal reply. (R. 68-70.)

SUMMARY OF ARGUMENT.

The respondents contend that there was no arguable labor dispute in this case and, even if there were, the case is moot.

ARGUMENT.

I.

NO ARGUABLE LABOR DISPUTE EXISTED.

The Chancellor held that the purpose of the picketing was "to shut down this project and cause the breach of contracts." (R. 87.) The Court of Appeals agreed with the Chancellor that "a bona fide labor dispute did not exist." (R. 98, 17.) Petitioners never at any time sought to obtain a contract from Rea or Jafco, and the picketing was admittedly not for the purpose of obtaining a contract. (R. 58, 59 and 60.) No labor dispute was ever claimed to exist—the contentions of the petitioner are that it has a right to picket (as "free speech") regardless of the effect or purpose. The closest parallel is the right to yell "Fire" in a crowded theater. If a person wanted to damage the theater owner, lit a small fire, and yelled "Fire," he would be acting similarly to the petitioner here. They attempted to create a "labor dispute" that was beyond solution (see bottom of page 58, in the Record), with the clear object of destroying contractual relations between Jafco and others, but the facts did not fit the statutory definition.

Marine Engineers Beneficial Association vs. Interlake S. S. Co. et al., 370 U. S. 173, concerned the interpretation of the term "labor organization." The Supreme Court held that the term, being within the National Labor Relations Act's scope, must be interpreted by the National Labor Relations Board. No interpretation of the Act is involved here.

Local No. 438, Construction & General Laborers Union, AFL-CIO vs. S. J. Curry, 371 U. S. 542, is much closer to the present case. In the Curry case the Union attempted to negotiate with Curry, and the Union also attempted to negotiate with the city of Atlanta (the equivalent of Jafco here) before picketing. The Georgia Superior Court denied an injunction. Despite this, and with facts in the record to support the labor dispute (over wages) the Georgia Supreme Court reversed. Clearly there was an arguable labor dispute in that case.

In the case now before the Court there were no negotiations with anyone, and none were desired. No contract was sought. The sole purpose of the picketing, as found by the lower courts on ample evidence, was to force a breach of construction contracts. This does not produce any arguable labor dispute.

II.

THIS CASE IS MOOT.

There is no question but that the construction project has long since been completed. The petitioners try to get around that by discussing damages for wrongful issuance of an injunction, and by placing the blame on the Tennessee courts for the delay. But why did the petitioners not go to the National Labor Relations Board themselves? They considered it (R. 68, 70). The Board declined their request for an informal opinion, and they apparently made no further attempt to get the Board to act. As expressed by the Chancellor:

> "* * * it will be observed that defendants have been free at all times to apply to the National Labor Relations Board for relief had they thought this Board had jurisdiction. Their failure to seek such relief leaves but one obvious conclusion, that the Board was without jurisdiction."

The petitioners speak of estoppel in their brief (p. 15). The term might be more aptly applied to their own actions in failing to go to the National Labor Relations Board.

CONCLUSION.

To hold that whenever a party insists that an arguable labor dispute exists the state court has no jurisdiction is to relegate many serious problems in the administration of justice to a limbo where no remedy at all is available. A party to a lawsuit does not decide whether he has stated a case—the court decides that.

The state court action should be affirmed.

Respectfully submitted,

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